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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1966

No. 757

JOHN MARSHALL, *Petitioner*,

vs.

GRANT SAWYER, AS GOVERNOR OF THE STATE OF NEVADA; NEVADA GAMING CONTROL BOARD, RAY J. ABBATICCHIO, JR., AS CHAIRMAN, GEORGE ULLOM AND NED A. TURNER, AS MEMBERS OF THE NEVADA GAMING CONTROL BOARD; NEVADA GAMING COMMISSION, MILTON W. KEEFER, AS CHAIRMAN, NORMAN D. BROWN, BERT GOLDWATER, JAMES W. HOTCHKISS AND F. E. WALTERS, AS MEMBERS OF THE NEVADA GAMING COMMISSION; D. I. OPERATING CO., A NEVADA CORPORATION; ALLEN ROEN; RUBY KOLÖD; DON BORAX; ARTHUR OSTAP; J. G. MURRAY, *Respondents*.

RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

HARVEY DICKERSON
Attorney General of Nevada
Carson City, Nevada

DON W. WINNE
Deputy Attorney General
Carson City, Nevada

Attorneys for State Respondents.

December 2, 1966

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RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

Rather than to laboriously state the facts in this case, Respondents agree with and adopt as their own the statement of facts set forth in Petitioner's brief filed with this Court, commencing on

page 4 and ending on page 11, except as herein specifically denied or controverted.

At the last line on page 4 of Petitioner's brief he claims that the "Respondent hit upon the idea of picking out 11 men, putting their names, pictures, description, FBI and CII or KCPD number in a 'black-book' and on March 29, 1960, advising the owners of the 12 major Las Vegas strip hotels and the Hotel Fremont in downtown Las Vegas (and later, the other major clubs in the Lake Tahoe-Reno area) that the presence of these men in their establishment was to be prevented 'in order to avoid the possibility of license revocation.' . . ." This purported statement of fact is deceptive. The deceptive innuendo is that the list of names composing the "black book" was arbitrarily chosen to be eleven—no more and no less. Such is not the case. The number of people who may from time to time find their names in the "black book" has never been, nor is it now, limited to eleven or any other number. The Petitioner in this case was determined to be a person with an extensive police record and hence came within Rule 5.010, section 3(e), adopted and promulgated by the Nevada Gaming Commission and State Gaming Control Board. Such duly adopted rule reads:

> "5.010 Methods of operation. . . .
>
> "3. The commission and the board deem that any activity on the part of a licensee, his agents or employees which is inimical to the public health, safety, morals, good order and general welfare of the people of the State of Nevada or which would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry is an unsuitable manner of operation. Without limiting the generality of the foregoing, the following will be deemed to violate required standards: . . .
>
> "(e) Catering to, assisting, employing or associating

with, either socially or in business affairs, persons of notorious or unsavory reputation or who have extensive police records, or persons who have defied congressional investigative committees or other officially constituted bodies acting on behalf of the United States or any state, or persons who are associated with or support subversive movements."

From the above then it can readily be seen that the Respondents did not "hit upon the idea of picking out 11 men" and putting those eleven men in the "black book," but, on the other hand, conceived the idea of the "black book" as a means of enforcing Rule 5.010, and placed the name of the Petitioner therein because it was determined by the administrative agency that he was the type of person Rule 5.010 sought to exclude from establishments carrying on the privileged and licensed industry of gaming.

On page 5 of Petitioner's brief, and continuing to page 7 thereof, the fact that major gaming establishments offer their services to the general public, and are therefore obligated to cater to the Petitioner, is set forth at length. This is also deceptive. Because the gaming industry is unique and because the right to enjoy the status of a gaming licensee is a privilege rather than a right, the State of Nevada has seen fit to limit the persons allowed to take part in the enjoyment and entertainment afforded by gaming licensees. At the present time NRS 463.350 reads as it did at the time Petitioner's name was placed in the "black book." Said section reads as follows:

"1. No person under the game of 21 years shall:

"(a) Play, or be allowed to play, any licensed game or slot machine.

"(b) Loiter, or be allowed to loiter, in or about any

room or premises wherein any licensed game is operated or conducted."

In addition to Rule 5.010, supra, the administrative agencies assigned the duty to control and regulate the gaming industry in Nevada have enacted Rule 5.012, entitled "Gaming by owners," which reads:

> "No person who owns any interest of any sort whatever in or to any nonrestricted licensed gaming operation and who also actively participates in the management or conduct of the licensed games or establishment shall play or be permitted to play, either in person or through an agent, at any gaming table in such establishment in which the establishment's bankroll or any part thereof is at risk."

In section 3(b) of Rule 5.010 it is provided that persons who are visibly intoxicated are not allowed to be permitted to participate in gaming activity by licensees.

Without belaboring this point, it is hoped by this litigant that it has been fully shown to the satisfaction of this Court that gaming establishments are not free to hold their services out to the general public as stated by Petitioner in his statement of facts, but, on the contrary, the State has placed the gaming establishment off limits to several people, the Petitioner being one of them, so as to promote and protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada.

We should like at this time to stress one point announced in Petitioner's statement of facts. On Page 9 of his brief he states that at no time was Petitioner's conduct objectionable to the Respondents herein and that "indeed, the Respondents are not concerned with Petitioner's conduct at all." From this the Petitioner seems to claim that he should be allowed to remain on

and enjoy licensed gaming premises because at the time he was expelled therefrom he was causing no disturbance. Let it be stated now that at no time did agents of the State of Nevada initiate or take any action against either gaming licensees or the Petitioner because of his manner of conduct in or about gaming establishments. It makes not one iota of difference to the Respondents that Petitioner was at the time of his expulsion acting as a law-abiding citizen and gentleman, for it had been determined, prior to the events leading to the commencement of this suit, that the Petitioner qualified to be among those other ten persons designated to come within Rule 5.010, section 3(e); that is, a person of notorious or unsavory reputation, or a person having an extensive police record, or a person who has defied congressional investigative committees or other officially constituted bodies acting on behalf of the United States or any state, or persons who are associated with or support subversive movements.

As to the remaining statements of fact as announced by Petitioner, the Respondents have no objection and do not desire to elaborate upon them.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE NO GROUNDS HAVE BEEN SHOWN UNDER RULE 19 OF THE RULES OF THE UNITED STATES SUPREME COURT.

The Revised Rules of the Supreme Court of the United States, in particular Rule 19, point out that a review on writ of certiorari is not a matter of right, but of sound judicial discretion. Guide lines are annuonced in this rule which this Court may consider when determining the appropriateness of the writ. While these guide lines are not conclusive, it is submitted by Respondents that they do not encompass the grounds set forth by Petitioner as establishing a basis for granting his writ of certiorari. Upon this

rule alone, this Court is justified in denying Petitioner's Petition for a Writ of Certiorari.

Should this Court desire to consider the merits of Petitioner's claims further, the following is submitted for its convenience.

QUESTION PRESENTED

The question presented to this Court by Petitioner is as follows:

> "May a state, consistent with the due process, equal protection and privileges and immunities guarantees of the Fourteenth Amendment to the United States Constitution and with the Bill of Attainder Clause (Art. I, § 10, cl. 1) of the Constitution, without any showing of necessity therefore and without any showing that less drastic, more precise methods would not combat the supposed evil sought to be reached, completely, and by name, ban a United States citizen from the entire premises of a business establishment with many accommodations open to the public, only one portion of which is licensed for gaming, on the ground that said person is a person of notorious or unsavory reputation, or has an extensive police record?"

The question as stated by Petitioner claims that he has been denied certain rights guaranteed him by the Constitution of the United States or certain amendments thereto. Hence it must be the contention of Petitioner that he has, in the first instance, a constitutional right to enter a gaming establishment and partake in the activities conducted therein. This is unequivocably denied by Respondents. No where in either the Federal or State Constitution is such a right announced. Nor does the Petitioner have any right to enter upon such premises because of any Nevada State Statute.

In an attempt to familiarize this Court with the legislation regulating gaming and the gaming establishments located in Nevada,

Respondents will briefly trace the history of gambling in this State. From a chronological examination of these gaming laws, it is apparent that from the beginning of statehood the State of Nevada has restricted and limited the persons eligible to partake in gaming.

The first Legislature of this State drafted Chapter LIII entitled "An Act to Prevent Gaming" which was approved February 3, 1865. By the terms of this act, any person who dealt, carried on, cause to be opened or conducted any gambling was guilty of a misdemeanor and subject to a fine of as much as Five Hundred Dollars or imprisonment of not more than six months.

The Fourth Session of the Nevada State Legislature enacted Chapter LXXI entitled "An Act to Restrict Gaming" on March 4, 1869. By the terms of this act, the prior act, which prevented gaming altogether, was expressly repealed and procedure was established whereby persons desiring to conduct gaming activity were required to first apply for and obtain a license.

The next legislation dealing with control and regulation of gaming was enacted March 4, 1875, as Chapter LXVIII entitled "An Act to Amend 'An Act to Restrict Gaming' passed March 4, 1869, and All Acts Amendatory thereof." This piece of legislation provided that to conduct any gaming without the proper license was a misdemeanor and also provided that no gaming was to be carried on ". . . in any front room of the first or ground floor of any building. . ." Lastly, the act prohibited any advertising of gaming by any ". . . sign, notice, or device of any description exhibited anywhere outside of a room in which a game is licensed to be played" and further prohibited the publishing ". . . in any newspaper, or printed or written card, handbill, or poster whereby the character of the business carried on in a room licensed for gambling shall be indicated."

Two years later, in 1877, the Legislature again amended existing gaming control acts with the enactment of Chapter LVII effective April 18, 1877. This act amended slightly the provision dealing with gaming on the first floor and then changed the legal age at which persons could gamble from 17 to 21 years. The licensing provisions were retained.

That same Legislature enacted on March 5, 1877, "An Act to Prohibit the Winning of Money from Persons who have no Right to Gamble it Away." In so doing, that Legislature exercised its right to restrict a certain class of individuals from games of chance. Section (1) of that act provided:

> "No person who has a wife, minor child, or minor children dependent in whole or in part upon his earnings for support and to whom (with himself) all such earnings are necessary for their proper and comfortable maintenance shall be deemed to have the right to squander any portion thereof in gambling. No person who is justly and legally indebted to another for board, clothing, goods, wares, merchandise, labor, medical attendance, or otherwise, and who is not lawfully seized of sufficient real or personal property liable to levy and sale under execution to satisfy such indebtedness, shall be deemed to have the right to squander his earnings or money in gambling so long as such lawful and just debts remained unpaid."

Again, in 1881, the Legislature enacted an act which limited the persons who were eligible to enjoy the privilege of entering upon premises wherein gaming was conducted. Chapter LXVIII entitled "An Act to Prevent Minors from Gambling" was enacted and made effective March 2, 1881. This act made it a misdemeanor for any proprietor of a gaming establishment to permit a minor to be "present while gambling is going on, either

as a spectator or participant in the game" or for any person to "knowingly gamble with any minor or minors."

The next major item of legislation concerned with gaming was enacted by the Twenty-fourth Session of the Nevada State Legislature in 1909. This was Chapter CCX entitled "An Act Prohibiting Gambling Providing for the Destruction of Gambling Property and other Matters Relating thereto." The Legislature, when enacting this act, not only eliminated a group of undesirables such as that composed of Mr. John Marshall, the Petitioner herein, and others from the gaming establishment, but completely expunged all laws which permitted gaming. From the effective date of this act, October 1, 1910, until 1931 gambling in all forms was illegal in the State of Nevada.

In 1931 Mr. Phil Tobin, a far-sighted legislator, introduced Assembly Bill No. 98 which has led to the establishment of Nevada's largest industry—legalized gambling. From March 19, 1931, the date this bill was approved, to and including the present date, the State of Nevada has had legalized gambling and has continually during this time regulated both the persons eligible to possess a gaming license and persons eligible to enter upon premises wherein gaming was conducted and enjoy the facilities therein offered.

At this time, applicable law is housed primarily in NRS Chapters 463, 464 and 465 and is known as the "Nevada Gaming Control Act."

It has been the purpose of Respondent, in tracing the legislation relating to gambling, to show to this Honorable Court and to the Petitioner that from the first days of statehood Nevada has continually regulated, controlled and disciplined all persons connected with the gaming industry as well as those who desire to partake in gaming. At no time, including the present, has any

individual had a right to enter upon premises wherein gaming was conducted, but on the contrary, a privilege to do so has been granted by the State of Nevada to individuals who have met the qualifications, standards and requirements established by the State Legislature and proper administrative agencies.

Let us look to appropriate legislative enactments and administrative rules as they now appear.

NRS 463.130—State policy concerning gambling.

> "1. It is hereby declared to be the policy of this state that all establishments where gambling games are conducted or operated or where gambling devices are operated in the State of Nevada shall be licensed and controlled so as to better protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada.
>
> "2. Any license issued pursuant to this chapter shall be deemed to be a revocable privilege and no holder thereof shall be deemed to have acquired any vested rights therein or thereunder."

NRS 463.150—Regulations of Nevada Gaming Commission: Contents; adoption, amendment, repeal.

> "1. The (gaming) commission is empowered and shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter, as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter. . . ."

Pursuant to NRS 463.150, the Gaming Commission adopted Rule 5.010, supra. In an effort to enforce the provisions of this rule, the "black book" was established by the gaming authorities. The purpose of the "black book" was to exclude the persons named therein from the entire premises licensed for gaming,

including the hotel, golf course, swimming pool, etc., and not merely the gaming area. (See the decision of the United States District Court, District of Nevada, set forth on page 42 of Petitioner's brief, and the decision of the United States Court of Appeals for the Ninth Circuit, set forth on page 54 of Petitioner's brief.)

It is the unalterable position of the Respondents that the establishment of the "black book" was a proper exercise of the police power of this State. Indeed, the Petitioner did not contest the validity of Rule 5.010 in the lower courts, and since those courts found the "black book" a means of enforcing this rule—how can the Petitioner attack it? He did not attack the end, that is Rule 5.010, so we ask—how can he attack the means, that is the "black book"?

Let us now explore the right of this State, in the exercise of its police power, to implement the "black book" as a means of enforcing the legislative enactments and rules promulgated by the gaming control administrative agencies.

The State of Nevada very early in its history announced that restrictive regulations on the gaming industry were valid. In *Ex Parte Livingston*, 20 Nev. 282, 21 Pac. 322 (1889), it was held:

> "The authority of the legislature, under the police power of the state, to pass acts regulating or prohibiting the sale of spirituous liquor, or regulating or suppressing gambling, is unquestioned."

The point with which we are here dealing was well stated by the authors of American Jurisprudence in *16 Am.Jur.2d, Constitutional Law, Sec. 319:*

> "A classification of the type of business and the extent of the regulation applicable to each which is perhaps more

> accurate has been adopted elsewhere, the courts declaring that business of a character which places it within the category of social and economic evils, *such as gaming* and the liquor traffic, and such useful occupations as may under certain circumstances become public and private nuisances, because offensive or dangerous to health, fall within the broad legislative power of prohibition or suppression, some wholly and absolutely, and others conditionally." (Emphasis added.)

It is again stated in *16 Am.Jur.2d, Contsitutional Law, Sec. 513:*

> "Classifications are often based upon the personal characteristics of the persons sought to be dealt with by particular legislation. Legislation has often sought to permit discrimination usually in favor of, but sometimes against, certain groups of society who are identified by special characteristics. Generally speaking, if the courts have been able to ascertain that particular qualities of a group form a reasonable basis for different treatment by the laws and have a proper relation to the purpose sought to be achieved, legislation containing classification founded on personal characteristics has been sustained."

A copious compendium of citations and quotes is not deemed necessary to appraise this knowledgeable Court of the judicial concept that a state, by exercising its police power, may regulate both businesses and persons and segregate them into reasonable groups or classes, when to do so would result in the advancement and promotion of general welfare of the inhabitants of the entire state. It is admitted by Respondents that a state does not have the power to deprive a group of persons of any constitutionally guaranteed rights under the guise of its police power. A case very much in point is *Griffin v. Southland Racing Corporation*, 370

SW2d 429 (Ark. 1963). This was an action by a holder of two free passes to defendant's race track for injunctive relief restraining the owner of the track from denying the plaintiff admission to that track. Said the Court, at page 430:

> "Apart from any possible issues of civil rights, which are not invoked here, the controlling rules of law are firmly settled by many decisions in many jurisdictions. The proprietor of a privately owned place of amusement, such as a race track or theater, is not under a common carrier's duty to render service to everyone who seeks it. It is uniformly held that the proprietor may refuse to admit, or may eject from his premises persons he thinks to be undesirable."

It is contended by these Respondents that the State, through its police power, may likewise refuse admission upon gaming premises because of the undesirability of that person, provided civil rights are not jeopardized.

Let us look now to see if in fact the Petitioner had any civil right to enter a gaming establishment, an establishment which by its nature requires close and strict State supervision, control and regulation.

To accomplish this objective, we must attempt to define or categorize what is meant by the illusive term "civil rights." All authors seem to have trouble with this task. In *15 Am.Jur.2d, Civil Rights, Sec. 1*, we find the following:

> "'Civil Rights' have been defined simply as such rights as the law will enforce, or as all those rights which the law gives a person. A 'civil right' has also been defined as a right due from one individual to another, the trespassing upon which is a civil injury for which redress may be sought in a civil action.
>
> "In a more restricted sense, however, the term 'civil rights' refers to the enjoyment of such guaranties as are contained

in constitutional or statutory law, or more specifically, to the guaranties found in the civil rights amendments to the Federal constitution and federal statutes enacted pursuant thereto, and in similar state constitutional and statutory provisions designed to prevent discrimination in the treatment of persons by reason of their race, color, religion, or previous condition of servitude."

It seems reasonable then to limit "civil rights" to rights which could be founded upon either the Constitution of the United States or the Constitution of the State of Nevada. In the question presented by the Petitioner, he raises the following constitutional areas:

1. Rights under the Fourteenth Amendment to the United States Constitution.
2. Bill of Attainder.

It is the position of the Respondents that Petitioner has no legitimate grounds upon which to base a claim that he has been deprived rights guaranteed him by the Fourteenth Amendment to the United States Constitution, nor is he the victim of a Bill of Attainder.

NO RIGHTS GUARANTEED THE PETITIONER BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION HAVE BEEN DENIED.

When considering the validity of Rule 5.010, supra, and the "black book" which is designed to enforce this rule, in view of the Fourteenth Amendment to the United States Constitution, we must keep in mind the uniqueness of the gaming industry, and the fact that in the absence of strict control the general health, safety and welfare of the inhabitants of this State would be jeopardized.

With this in mind, Respondents cite prior learned opinions

issued from this Court concerned with legislation dealing only with a group or segment of the citizenry.

In *National Union of Marine Cooks and Stewards v. Arnold*, 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed.2d 46, the Court followed past precedent and held that a person claiming injury because of class legislation must show to the satisfaction of the Court that others similarly situated have been treated differently. Said the Court:

> "We have no difficulty with the equal protection clause because no showing has been made that anyone comparably situated has been treated differently from petitioner."

In *Morey v. Doud*, 354 U.S. 457, 77 S.Ct. 1344, 1 L.Ed.2d 1485, it was stated:

> ". . . (We) start with the established propositions that the prohibition of the Equal Protection Clause goes no further than the *invidious discrimination*." (Emphasis added.)

This Court then quoted from past decisions and announced the following:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary."
>
> 2. "A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality."
>
> 3. "When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, this existence of that state of facts at the time the law was enacted must be assumed."

4. "One who assails this classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

Justice Whittaker, in an opinion decided in 1959, stated:

"Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it."

See: *Allied Stores of Ohio, Inc., v. Bowers*, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480.

The Chief Justice of the Court held in *McGowan v. State of Maryland*, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 383:

"Although no precise formula has been developed, the Court has held that the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others. The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective."

Scores of other cases standing for the same proposition could be cited by Respondents. However, it seems clear that a state has wide latitude in enacting legislation dealing with groups or classes of persons. The question now is then, did the State administrative agencies violate their wide discretionary powers when dividing society into two classes, one of them being composed of persons with unsavory or notorious reputations or extensive police records. It was pointed out in *Griffin v. Southland Racing Corporation*, supra, that a person could lawfully be excluded from a race track because he was "undesirable." It is also the unalterable

conclusion of the Respondents that an extensive police record is a valid characteristic upon which a state may enact class legislation or an administrative agency may promulgate rules and regulations.

Certainly the Petitioner does have an extensive police record. Part of it is set forth in his Complaint filed December 22, 1960, in the United States District Court for the District of Nevada. The appropriate part is found on pages 70 and 71 of Petitioner's brief filed with this Court. In addition to this, the United States District Court specifically found the following:

> "That plaintiff (Petitioner herein) is properly included in this reasonable classification is substantiated by the following evidence:
>
> " 'Plaintiff, in his complaint, admits six convictions, including a felony conviction, and testified that he had been arrested or questioned by the police over a dozen times for crimes including murder, for which he was not convicted.'
>
> "The evidence shows that plaintiff has the reputation in Chicago of using 'muscle tactics' such as threats, extortion, bombings and murder. On January 26, 1953, plaintiff was reported to the Chicago Crime Commission to have been arrested eighteen times from 1922 to 1951, and was reputed to be a bank robber, ex alki peddler and current bookmaker." (See page 46 of Petitioner's brief.)

This indeed is sufficient reasoning and basis upon which the State of Nevada could place Mr. Marshall within the class of people defined in Rule 5.010.

Indeed many, if not all of our sister states, have classified criminals and especially felons. A lengthy collection of cases and legislative enactments from the various jurisdictions in which criminals are classified would serve only to extend this brief beyond all reasonable length and unjustifiably occupy the time

of this Court. Hence, let it be succinctly stated that criminals have been the subject of class legislation in the following areas:

1. Voting.
2. Owning property.
3. Carrying weapons.
4. Associating or consorting with each other.
5. Registering in cities where they visit.
6. Holding public office.

Because of the above, it is the position of the Respondents that the exercise of the police power of the State of Nevada with which we are here concerned does not contravene constitutional limitations as to the equal protection and privileges and immunities guarantees of the Fourteenth Amendment of the United States Constitution.

THE PETITIONER HAS NO BASIS UPON WHICH TO COMPLAIN THAT HE IS THE VICTIM OF A BILL OF ATTAINDER.

The Petitioner has raised the question that Rule 5.010, supra, together with the "black book," which is a means of enforcing Rule 5.010, amounts to an unconstitutional Bill of Attainder. If such is the case, then certainly both the rule and the "black book" must fall because of Art. I, Sec. 10, of the United States Constitution, which in part reads:

"No State shall . . . pass any Bill of Attainder, . . ."

The merit to this argument is non-existent. The Ninth Circuit Court, from which this appeal is taken, summarily discounted this argument as follows:

"As generally understood, a bill of attainder is an act of a legislative body that applies either to named individuals

or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial. Garner v. Board of Public Works.

"Marshall points to a passing comment by Justice Black in his concurring opinion in Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 143, as implying that an act by an administrative or executive branch of government may constitute a bill of attainder. We do not regard the language relied upon as authority for thus expanding what appellant himself concedes to be the traditional role of a bill of attainder." (See page 58 and 59 of Petitioner's brief.)

In addition to the above, however, Respondents would direct the attention of this Court to *DeVeau v. Braisted*, 363 U.S. 144, 80 S.Ct. 1146, 4 L.Ed.2d 1109. In this case, certain union officials and others sought a declaratory judgment regarding the constitutionality of section 8 of the New York Waterfront Commission Act of 1953 (N.Y. Laws 1953, cc 882, 883; McK. Unconsol. Laws, Section 6700 aa et seq.) Basically, this section provided that no person shall solicit or receive any dues on behalf of any waterfront union if any officer of such union has been convicted of a felony, unless he has been subsequently pardoned or received a certificate of good conduct.

This Court found that law enforcement agencies of the States of New York and New Jersey revealed crime and corruption was widespread on the waterfront. "The Commission reported that the skulduggeries on the waterfront were largely due to the domination over waterfront employment gained by the International Longshoremen's Association, as then conducted. Its employment practices easily led to corruption, and many of its

officials participated in dishonesties. The presence on the waterfront of convicted felons in many influential positions was an important causative factor in this appalling situation."

Later in the opinion, this Court said:

> "Section 8 is the same kind of regulation as is contained in the compact: it effectively disqualifies ex-felons from waterfront union office, just as the compact makes prior conviction of certain felonies a bar to waterfront employment, unless there is a favorable exercise of executive discretion. The total state legislative program represents a drastic effort to rid the waterfront of criminal elements by generally excluding ex-felons. What sensible reason is there to suppose that congress would approve the major part of this local effort, as it has expressly done through its approval of the compact, and disapprove its application to union officials who, as history proved, had emerged as a powerful and corrupting influence on the waterfront, second to none."

After making the above finding, this Court stated:

> "Barring convicted felons from certain employments is a familiar legislative device to insure against corruption in specified vital areas." (At this point many cases and statutes are cited.)

The last paragraph of this scholarly opinion begins:

> "Finally section 8 of the Waterfront Commission Act is neither a bill of attainder nor an ex post facto law. The distinguishing feature of a bill of attainder is the substitution of a legislative for a judicial determination of guilt. See United States v. Lovett, 328 U.S. 303, 66 S.Ct. 1073, 90 L.Ed. 1252. Clearly section 8 embodies no further implications of appellant's guilt than are contained in his 1920 convictions; and so it manifestly is not a bill of attainder."

The last sentence of the opinion could appropriately be placed

in an opinion in this case, should this Court deem an opinion necessary.

> "The proof is overwhelming that New York (Nevada) sought not to punish ex-felons, but to devise what was felt to be a much needed scheme of regulation of the waterfront (gaming industry), and for the effectuation of that scheme it became important whether individuals had previously been convicted of a felony (determined to come within Rule 5.010-3(e).)"

It is submitted that in no way can the regulatory rules of the gaming agencies be deemed to be a Bill of Attainder.

CONCLUSION

All of the questions presented to this Court by the Petitioner have been answered by the lower courts. That is, the United States Court of Appeals for the Ninth Circuit found that Petitioner's claim of a denial of due process was without merit. (See the opinion of the Ninth Circuit Court of Appeals, page 61 of Petitioner's brief.)

The Circuit Court of Appeals further found that because Petitioner failed to attack the validity of Rule 5.010, that rule, for the purposes of this case, must be considered as being valid and effectively restricting a class of individuals from establishments wherein gaming is conducted. This ruling will preclude any argument of the Petitioner based upon a denial of equal protection and privileges and immunities guaranteed by the Fourteenth Amendment to the United States Constitution. (See pages 56 and 57 of Petitioner's brief.)

The Circuit Court of Appeals further found there to be no Bill of Attainder of which Petitioner can complain. (See pages 58 and 59 of Petitioner's brief.)

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

HARVEY DICKERSON

DON W. WINNE

Attorneys for State Respondents.

SPO, CARSON CITY, NEVADA, 1966